perty which in any other state could not exist; and these were not like contracts that were entered into in one state which would be good everywhere, because these could have no force or effect out of the state, could not be enforced in any other place. And yet the Supreme Court of the United States held that the recognition of the state liens by that bankrupt law did not render it liable to the objection of want of uniformity in the constitutional sense. (See *Peck* v. *Jenness*, 7 Howard 612.—Ed. Am. Law Reg.)

I do not desire to enter into any extended discussion. Enough has been said by other senators in relation to this question, so it is understood in all its bearings; and it seems to me that it is entirely clear that the adoption of these different homestead exemptions of the different states does not prevent the law from being uniform in a legal sense. I might say that when the bankrupt law of 1841 was under discussion in Congress, an amendment was adopted in the House by a very considerable majority, embodying the very provision that is contained in this bill, and that amendment was moved by a member of Congress who is now one of the judges of the Supreme Court of the United States. Eventually that amendment was struck out by a small majority, but it was at one time adopted, and adopted upon the motion of a gentleman who is now one of the judges of the Supreme Court of the United States.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MAINE.[1]

SUPREME COURT OF MASSACHUSETTS.[2]

SUPREME COURT OF MICHIGAN.[3]

SUPREME COURT OF NEW YORK.[4]

SUPREME COURT OF VERMONT.[5]

Account Stated.

The plaintiff claimed to have left a draft with a bank, for collection,

[1] From W. W. Virgin, Esq., Reporter; to appear in 54 Me. Rep.

[2] From Hon. Charles Allen, Reporter; to appear in Vol. 13 of his Reports.

[3] From Hon. T. M. Cooley; to appear in 16 Mich. Rep.

[4] From Hon. O. L. Barbour; to appear in Vol. 48 of his Reports.

[5] From W. G. Veazey, Esq., Reporter; to appear in 39 Vt. Reports.

on the 24th of July 1856. His bank-book was written up as early as August or September 1856, and balances were struck and the vouchers delivered up to him repeatedly, afterwards, until 1859, when he drew out of the bank the balance remaining to his credit. In September 1856 he knew, or with reasonable attention might have known, that the draft was not credited to him on the books of the bank; yet he omitted to bring the matter to the notice of the bank until the spring of 1862. *Held*, that this was a *stated account* not objected to within a reasonable time; so clearly so that it was not, under the evidence, a question proper for the consideration of the jury, whether the delay was sufficiently accounted for: *Hutchinson* v. *The Market Bank of Troy*, 48 Barb.

Held also, that the judge properly refused to charge that under the circumstances the plaintiff was *absolutely and conclusively* bound by the stated account, and could not recover of the bank the amount of the draft. The true rule in such cases is that the stated account is conclusive upon the parties, unless the plaintiff is able to impeach it by showing, affirmatively, fraud or mistake: *Id.*

ACTION.

For levying Illegal Taxes.—As the statute directs the supervisor to levy upon the township the taxes which are specified in the certificate made to him by the township clerk, he cannot be made liable in trespass for so doing, even though some of the items are illegal, provided the certificate does not show the illegality: *Wall* v. *Trumbull* and *Smith* v. *Crittenden*, 16 Mich.

For allowing Illegal Demands.—A member of the township board is not liable in trespass to one who is taxed to pay an illegal demand which has been allowed by the board, where they had jurisdiction to pass upon the demand and only erred in judgment. Jurisdiction of ordinary demands is obtained by their mere presentment; and where the claims are of a class which are only referred to the board by a special statute and vote, the presentation of a claim as one of the class covered by the statute and vote is sufficient to call into exercise the judicial functions of the board to determine whether it is so in fact. And in passing upon this question the members are entitled to the same immunity as judges of courts: *Wall* v. *Trumbull*, 16 Mich.

The facts that the board allowed the demand without proof under oath, on the oral statement of one of its members, who was familiar with the facts, and that the claimant was not present in person, do not invalidate the allowance. There is no impropriety in claims being handed in advance to a member of the board for presentation, or in the members acting upon their own knowledge without other proof: *Id.*

AGENT.

Authority of a Factor to act without Instructions.—In unforeseen circumstances of necessity or great urgency, a factor has an implied authority to act for his principal, irrespective of his instructions or the ordinary usages of trade, in adjusting contracts and claims and disposing of property; and a factor who has so acted, in good faith and with a sound discretion, under the circumstances as they then appeared, will not be

liable for the consequences, although it turns out that his course was disadvantageous to his principal: *Greenleaf* v. *Moody*, 13 Allen.

The owner of hay in Maine consigned it to New Orleans to be sold, during the rebellion. The military authorities of the United States bought a portion, agreeing to pay for it in cash, and seized the remainder; and afterwards refused to pay for any of it except in government certificates of indebtedness, bearing interest, to be taken at par. The consignees, acting in good faith and according to their best judgment and the usual custom of factors at New Orleans at that time, but without notice to the owner, accepted these certificates of indebtedness, and shortly afterwards sold the same at ninety-three cents on the dollar, which was then their market value there. The owner was ignorant of this custom. *Held*, that the factors were not liable to the owner for the discount of seven per cent. made in selling the certificates of indebtedness: *Id.*

Arbitration and Award.

Uncertainty — Mutuality — Finality — Submission — Partnership.— When one article of an award is, in itself, so complete and independent of the rest of the award, that its separate enforcement would work no injustice, a party may declare and recover upon it, even though the other portions of the award are void: *Lamphire* v. *Cowan*, 39 Vt.

If the decision is certain, uncertainty in the reasoning which led to it will not invalidate the award: *Id.*

An award between partners, relating to the disposition of partnership debts and assets, may be certain though their amounts are not stated, if without such statement they are sufficiently identified: *Id.*

An award that one party shall pay a stranger a debt for which both parties are bound, is valid as between the parties to the award: *Id.*

An award need not always provide a method of enforcement. It is often impossible, when partnership assets and debts are apportioned. Such an award may be valid between the partners, though it does not and cannot affect the rights of the creditors or debtors of the partnership: *Id.*

If by manifest implication that appear, which, if positively expressed, would render the award good, that is sufficient to support it: *Id.*

(When an obligation is so thrown upon one party as to be but a portion of the consideration for the award in his favor against the other party, the performance of that obligation, if not provided for by the award, may be treated, without injustice, as a condition precedent to his recovery on the award, so that on proof of its performance he ought to recover.)—Steele, J.: *Id.*

An award which settles a partnership and divides its assets and liabilities as between the partners, and establishes their rights and duties toward each other, is mutual and final: *Id.*

The submission embraced "all matters of difference." It must be presumed in absence of evidence to the contrary, that all matters passed upon by the arbitrators were matters of difference, and that all matters of difference were passed upon: *Id.*

Bailment.

Distinguished from Sale.—A receipt by which A. acknowledges to

have received of B. a sewing-machine, to be returned in three months, with condition added that if A. pays B. $60 within the three months, the receipt shall be void, and B. shall execute a bill of sale of the machine, creates a bailment only, and if A. sells the machine to a third person, B. may immediately replevy it, though the three months have not expired: *Dunlap* v. *Gleason*, 16 Mich.

Bills and Notes.

Blank Indorsement by several—Parol Evidence as to Special Arrangement between Parties.—A blank indorsement of a negotiable promissory note is, as between the immediate parties thereto, only *primâ facie* evidence of the contract implied by law; and it is competent to prove by parol evidence, the agreement which was in fact made at the time of the indorsement: *Smith* v. *Morrill*, 54 Me.

As to third persons without notice of any other contract, the one implied by law is conclusive: *Id.*

In an action by one indorser who had paid the note, against another for contribution, it is competent for the plaintiff to prove that it was "verbally agreed by all the indorsers, previous to indorsing, that their indorsements should be joint and not several; and that, in the event of liability thereon, and the payment thereof by either, of the whole amount of the note, each should pay to the one thus paying, his equal proportion of the amount thus paid, as joint and not as several indorsers:" *Id.*

Proof of such agreement would make the indorsers, as between themselves, co-sureties, and payment of the whole debt by one, would authorize the maintenance of suits by the one so paying, against each of the others for their proportional parts, upon counts for money paid for their use: *Id.*

Constitutional Law.

Legislative Allowance of Private Claims.—The constitutional provision that the legislature shall not audit and allow any private claim, extends to claims against townships and counties as well as those against the state. *Held*, therefore, that a legislative act declaring a note given by individuals for bounty moneys to be a lawful charge against the township, and directing the supervisor to levy a tax for its payment, was inoperative: *People* v. *Shennan*, 16 Mich.

Counter Claim.

A counter claim or defence of an equitable nature, may be interposed, although the claim or demand mentioned in the complaint is purely of a common law nature, or for the recovery of money only: *The Hicksville, &c., Railroad Co.* v. *The Long Island Railroad Co.*, 48 Barb.

If the claim and counter claim arose out of the same transaction or contract, there is no necessity for a cross-action by the defendant: *Id.*

Debtor and Creditor.

Fraudulent Conveyance to Debtor's Wife—Deposition of Wife.—In a suit in equity by a creditor against his debtor and the debtor's wife, seeking to reach and apply in payment of the debt property of the debtor fraudulently conveyed to her with intent to defraud his creditors,

and so held by her that it cannot be come at to be attached or taken on execution in a suit at law against the debtor, the court will not restrain the plaintiff from taking the deposition of the debtor's wife, touching the matters alleged in the bill against her, after the process has been duly served upon her, although no service has been made upon her husband, and he is out of the country, and the plaintiff has not established his debt against her husband by any judgment: *Crompton* v. *Anthony*, 13 Allen.

Decedents' Estate.

Ancillary Administration in another State—Conclusiveness of Decree in another State.—If ancillary administration is taken out in another state upon the estate there of a deceased citizen of Massachusetts, a decree of the judge of probate there, allowing a claim of the administrator against the estate, and finding a balance due to him over and above the assets there coming to his hands, is not conclusive here, and will not entitle the administrator to charge for such balance here: *Ela* v. *Edwards*, 13 Allen.

Deed.

Reforming.—The defendant agreed to sell and convey to the plaintiffs a lot of land 26 feet 6 inches in width, being in depth on C. street 120 feet, "*to and including the stable on the rear of the premises.*" The defendant executed and delivered a deed for the lot, describing it as 120 feet in depth, but making no mention of the stable. There was a stable on the rear of the premises, built by a former owner, situated partly upon the said lot, but 11 feet and 10 inches thereof were located on the rear of another lot belonging to the defendant. Both parties acted in the erroneous belief that the 120 feet so conveyed included the stable, and neither knew that any portion of it was located upon another lot. *Held*, that this was not a case for the equitable interposition of the court to reform the deed, so as to make it conform, as to the dimensions of the premises, to the previous agreement between the parties: *White* v. *Williams*, 48 Barb.

A court of equity never grants that relief except when the mistake is very plain, and operates contrary to the intention of the parties. Per Clerke, J.: *Id.*

Evidence.

Estoppel—Attorney—Deposition of Deceased Witness.—A party is not estopped from explaining how he understood the oath he took on signing a bill in chancery which is afterwards read in evidence against him: *Whitcher* v. *Morey*, 39 Vt.

It appearing that a law partner of the master who took a deposition, acted, at the taking, as counsel on behalf of one of the parties, the court will not, in absence of proof, presume that their partnership extended to matters of this nature: *Id.*

Testimony given on a former trial by a witness, since deceased, may be reproduced from minutes which were then taken, and which are proven to have been "full and taken with substantial correctness:" *Id.*

If the original minutes are shown to be lost, a copy of them, proven to be a correct transcript, may be read: *Id.*

It is not important that the person who swears to the minutes should profess to testify from recollection of the testimony, or be able to so refresh his memory by reading the minutes as to recall the testimony to his mind. If he can swear that his minutes of the evidence given by the deceased witness are full and substantially correct, they may be read to the jury: *Id.*

The party proposed to read to the jury as evidence a copy taken by another person of the judge's notes, of the testimony of one C., as given upon a former trial, C. having deceased; and, at the same time, proposed to prove that the original minutes were lost and the copy was correct, and by the deposition of the judge that the original minutes were full and taken with substantial correctness. *Held*, that upon the proof offered the party was entitled to read the copy to the jury: *Id.*

Of Party against Representative of Deceased Party.—The statute which makes a party to civil proceedings a witness generally, except that where the opposite party is representative of a deceased person, he shall not testify to facts which must have been equally within the knowledge of the deceased, does not make the competency to testify depend upon the relative degree of knowledge of the deceased and the witness, but is meant to altogether exclude the evidence where the deceased, if living, could have spoken to the same transaction: *Kimball* v. *Kimball*, 16 Mich.

Frauds, Statute of.

Deed—License—Verbal Contract to convey Land.—A verbal contract for the purchase and future conveyance of real estate, followed by a payment and securing of the price as agreed is not of itself sufficient to authorize or license the proposed purchaser to enter upon the land, even after the time has elapsed within which the owner of the land was to give his deed: *Whitcher, Adm'r.*, v. *Morey*, 39 Vt.

A verbal contract for the future conveyance of land, though followed by payment of the purchase-money, is, until the deed is given, inoperative to pass any interest, legal or equitable, in the land or right to enter upon it, and, unconnected with other facts, is not even evidence of a permission to enter upon the land: *Id.*

C. bargained verbally with M. for a lot of woodland, C. to deliver part of the purchase-money, and his notes and a mortgage for the rest to a third person at a specified time, and M. to leave a deed with the same person to be taken by C. at the same time. C. paid and delivered his notes and a mortgage according to agreement. M. left no deed for C., and ultimately refused to convey. The jury finding that M. gave C. no permission to enter upon the land, and he having entered and peeled bark, *it is held*, that the above facts were no warrant to C. to enter upon the land, and the bark he peeled was M.'s property, and could not be held by the plaintiff who bought it of C.: *Id.*

Sale of Goods—Memorandum in Writing—Signature by Stamping.—The acceptance in Massachusetts of a bill of goods which are in a warehouse in New York, with an order on the warehouseman for their delivery without notice to him, is not an acceptance or receipt of the goods, which will take the sale out of the operation of the Statute of Frauds: *Boardman* v. *Spooner*, 13 Allen.

If on the trial of an action to recover the price of goods sold and delivered the purchaser produces, on notice, the vendor's bill of sale of the goods, bearing the purchaser's name stamped thereon with a press, and there is no evidence to show when or under what circumstances it was so stamped, this is not sufficient proof to authorize the jury to find a note or memorandum in writing of the bargain, made and signed by the purchaser: *Id.*

If by the terms of an oral contract goods sold are subject to the purchaser's approval, a broker's note in writing of the sale which omits that portion of the oral contract is inadmissible to take the case out of the Statute of Frauds; nor, in such case, can the vendor be allowed to prove that by a usage of trade the goods are to be examined within a limited time, and if not examined and objected to within that time the sale is deemed complete: *Id.*

Husband and Wife.

Divorce for Cause existing at Marriage.—The statute allowing a divorce on behalf of the wife, where the husband has become an habitual drunkard, will not warrant a decree where the husband, to the knowledge of the wife, was a drunkard at the time of the marriage, and his habits have not materially changed since: *Porrett* v. *Porrett*, 16 Mich.

Innkeeper.

Intoxicating Liquor.—An innkeeper has the same rights and privileges, so far as his own family or household is concerned, to furnish them with such food and beverage as he judges fit and proper for their sustenance and refreshment, as any other head of a family, and incurs no penalty thereby, nor by having it in his house when he so furnishes it: *State* v. *Jones*, 39 Vt.

The respondent was a hotel-keeper, and W. was employed by him four days as a hostler. While so employed the respondent furnished him at the bar with whiskey three times, which he there drank. W. took care of the stables and was up nights, and had been so sitting up on these three occasions when he so drank. *Held*, that this furnishing to W. did not come within the prohibited and penal provisions of the statute: *Id.*

But the gratuitous furnishing of liquor to musicians, on the occasion of dances at his house, though hired by himself, came within the statute: *Id.*

Joint Debtors.

Separate Discharge.—Under the statute of New York which authorizes one of several joint debtors to make a separate settlement with the creditors, which shall not discharge the others except for his proportion of the debt, it is not necessary that the receipt given by the debtor thus settling should refer to the statute, where it sufficiently appears on its face to be given under it: *Holdredge* v. *Farmers' and Mechanics' Bank*, 16 Mich.

Statute of Limitations—Payment by One.—Where one partner after the dissolution of the partnership gave a writing to the creditors, agreeing that they might compromise with and discharge the other, and he

would still remain liable, and the creditors took compromise notes from the other partner which were afterwards paid, *held*, that such payments must be considered as made only on behalf of the party making them, and could not have the effect to prevent action being barred by the statute as to the other: *Sigler* v. *Platt*, 16 Mich.

LIBEL.

Complaint—Innuendo.—Where the words used in an alleged libel, *ex necessitate*, expose the plaintiff to public ridicule or reproach, no explanation or application of the language employed is required; but where they are at all susceptible of an innocent construction, a complaint alleging that the publication tends to blacken and injure the reputation of the plaintiff and expose him to public hatred, contempt, and ridicule, cannot be sustained without an *innuendo* explanatory of the ambiguous words: *More* v. *Bennett*, 48 Barb.

A charge that *a prostitute is under the patronage or protection of the plaintiff* does not necessarily impute moral guilt; and where, in a complaint upon such a charge, there was no allegation that the writer of the alleged libel intended to impute such guilt to the plaintiff; *it was held*, that the complaint was fatally defective in not containing an *innuendo*: *Id.*

Where the words are so ambiguous that they may be understood in an innocent sense, the mere allegation of malicious intention is not sufficient: *Id.*

MANDAMUS.

Return sufficient in Law but false in Fact—When Court will issue Peremptory Writ.—In this state, if, to an alternative writ of *mandamus*, the respondents return a legally sufficient cause, though false in fact, the court will decline to proceed further: *Dane* v. *Derby et al.*, 54 Me.

If the return be falsified in an action on the case, or by criminal information for a false return, the court will then issue a peremptory writ: *Id.*

Neither the statute of 9 Ann., c. 20, nor any similar statute, has ever been adopted in this state: *Id.*

The respondent cannot demur to the petition and the writ; but, if the writ be defective or do not contain allegations of all such facts as are necessary to show that the prosecutor is legally entitled to the relief prayed for, it may be quashed on motion, or the defects may be taken advantage of in the return: *Id.*

If the original return be sufficient, the filing of an additional one, in the nature of a demurrer, will not affect the sufficiency of the former: *Id.*

The writ must be executed in the form in which it has been issued, or not at all: *Id.*

The granting of a writ of *mandamus* is a matter of discretion, and not of right: *Id.*

The court will not grant a peremptory writ against municipal officers elected for one year only, ordering a new election, because of the fraudulent voting practised at the election at which they were declared to be elected, if such officers have returned a sufficient cause to the alternative writ: *Id.*

Negligence.

Injury resulting in Death.—The husband at the common law may maintain an action against one through whose wrongful act an injury is occasioned to the wife, notwithstanding death results before suit brought. But he can only recover the pecuniary damage to himself, in consequence of the injury, up to the time of the death. His anxiety and mental anguish, occasioned by the injury, do not constitute a basis for the recovery of damages: *Hyatt* v. *Adams*, 16 Mich.

Railroad Companies.

Restricting Liability as Carriers.—A railroad company chartered as common carriers have no right to refuse to receive and carry goods except upon a restricted liability, but every one has a right to require his goods to be carried under the common law obligations: *McMillan* v. *The M. S. and N. I. Railroad Co.*, 16 Mich.

The statute which forbids railroad companies restricting their common law liability as carriers, does not prevent persons transacting business with them from making such contracts as they please by which they relieve the company from some portion of their liabilities: *Id.*

And where a bill of lading is accepted without objection, and property sent under it, with condition exempting the carrier from responsibility for loss by fire, the condition must be presumed to have been assented to by the party for sufficient consideration, and proof that he did not read it is immaterial: *Id.*

Bill of Lading—What it covers.—A bill of lading given at Cincinnati, by which a railroad company promises to deliver goods "at Toledo for Detroit"—the consignee doing business at Detroit—will cover the transportation to Toledo only, and another company receiving the goods at Toledo to transport to Detroit, will receive and carry them under their common law liability, and not under the conditions of the bill of lading: *Id.*

Specific Performance.

Where Vendor cannot make complete Title.—After a contract had been made for the conveyance of a parcel of land, it was discovered that the vendor's deed conveyed to him an undivided two-thirds only. The vendee was willing to take that and pay rateably, but the vendor refused to convey. *Held*, that the vendee was entitled to specific performance to the extent of the two-thirds: *Covell* v. *Moseley*, 16 Mich.

But held further, that it was error to order the vendee to deliver up possession of the whole land, and to charge him with rent for the whole from the time performance should have been made. The order in these respects should have been no broader than the decree for performance: *Id.*

Trade-Marks.

Injunction.—Where the defendant has procured a trade-mark closely resembling one already in use by the plaintiff, and has attached it to a perfume manufactured by him, adopting the same name and style of packages as the latter, with the intention of counterfeiting the plaintiff's trade-mark, as well as imitating the article and style of packages used by him, and of appropriating, through such counterfeit label, the market

obtained for the perfumery of the plaintiff, and in this design he has been to some extent successful, and has thereby injured the plaintiff, it is a proper case for an injunction to restrain the use of the label or trade-mark; notwithstanding the defendant sets up the defence that the plaintiff, in selling his perfume, is attempting to impose upon and defraud the public, if the evidence upon that subject is conflicting: *Smith et al.* v. *Woodruff*, 48 Barb.

That defence ought to be suggested by the *court*, whenever the imposition on the part of the plaintiff is flagrant. Thus, where a quack compounds noxious and dangerous drugs, hurtful to the human constitution, and advertises them as a safe and sure remedy for disease; or where a charlatan avails himself of the prejudice, superstition, or ignorance of some portion of the public to palm off a worthless article, even when not injurious, the case falls beneath the dignity of a court of justice to lend its aid for the redress of such a party, who has been interfered with by the imitations of another quack or charlatan. Per LEONARD, J.: *Id.*

VESSEL.

Registry—Permanent and Temporary—Sale.—A vessel cannot have two registers at the same time: *Chadwick* v. *Baker*, 54 Me.

"Permanent" and "temporary," when applied to the registers of a vessel, do not imply that they are co-existent, but successive: *Id.*

Such a sale of a vessel, in whole or in part, as creates a new owner, renders her former registry inoperative and void: *Id.*

Under Act of Congress of July 29th 1850, a bill of sale of a vessel, whether conditional or absolute, must be recorded in the office from which her last register issued: *Id.*

LIST OF NEW LAW BOOKS RECEIVED BY THE PUBLISHERS OF THE AMERICAN LAW REGISTER.

BOUVIER.—A Law Dictionary, adapted to the Constitution and Laws of the United States of America, and of the several States of the American Union. By JOHN BOUVIER. 12th Ed. revised and greatly enlarged. 2 vols. Royal 8vo. Philadelphia: Geo. W. Childs, 1868. $12.

ENGLISH COMMON LAW REPORTS.—Reports of Cases in the English Courts of Common Law. Vol. CXV., being Vol. 19 of Common Bench Reports. By JOHN SCOTT. Containing Cases argued and determined in the Courts of Common Pleas and Exchequer Chamber in Trinity Term 1865. Edited, with references to American Decisions, by JAMES PARSONS. Philadelphia: T. & J. W. Johnson & Co. $4.

MICHIGAN.—Reports of Cases decided in the Supreme Court of Michigan from October 31st 1866 to July 11th 1867. WILLIAM JENNISON, Reporter. Vol. 2, being Vol. 15 of the Series. Detroit: W. A. Throop & Co., 1867.

SCRIBNER.—A Treatise on the Law of Dower. By CHARLES H. SCRIBNER. 2 Vols. 8vo. Philadelphia: T. & J. W. Johnson & Co., 1867. $15.